FILE COPY

Supreme Court, U. S.
FILED
JAN 6 1943
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 284.

H. T. OVERSTREET ET AL., *Petitioners*,

v.

THE NORTH SHORE CORPORATION, *Respondent*.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF ON BEHALF OF THE AMERICAN TOLL BRIDGE ASSOCIATION AND THE JAMES RIVER BRIDGE SYSTEM, AS AMICI CURIAE.

HARRY J. GERRITY,
Suite 1001 Hill Building,
Washington, D. C.,
General Counsel, American Toll Bridge Association, and Counsel for James River Bridge System.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

INDEX.

Opinions Below 1

Jurisdiction 1

Question Presented 2

Preliminary Statement 2

Argument 3

Summary of Argument 3

(A) The Legal Status of Toll Bridges, and employees operating such Facilities, has been definitely established as not a part of interstate commerce.. 3

(B) The arguments on behalf of petitioners and the Administrator are contrary to and unsupported by the manifest intent of the statute involved .. 3

Conclusion 8

CITATIONS.

CASES:

Detroit International Bridge Co. v. Tax Appeal Board, 294 U. S. 83 3

Federal Trade Commission v. Bunte Bros. Co., 312 U. S. 349 ..... 5, 6, 7

Gouax v. Bovay, 105 Fed. (2d) 256 4

Henderson Bridge Co. v. Kentucky, 166 U. S. 150 ... 3

Johnson v. Dallas Downtown Development Co., 5 Wage Hour Dept. 984 8

Kirschbaum v. Walling, 316 U. S. 517 ..... 4, 5, 7, 8, 9

United States v. Darby, 312 U. S. 100 5

Warren-Bradshaw Drilling Co. v. Hall, No. 21, this Term, dec. Nov. 9, 1942 5

STATUTES:

Act of March 3, 1899 (30 Stat. 1151) 4

Act of March 23, 1906 (34 Stat. 84) 4

Fair Labor Standards Act of 1938 (52 Stat. 1060) 2, 3

Section 3(b) 4, 5

Section 3(d) 9

Section 3(j) 5

Federal Employers' Liability Act, 35 Stat. 65, amended, 53 Stat. 1404 ..... 5, 7, 8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 284.

H. T. OVERSTREET ET AL., *Petitioners,*

v.

THE NORTH SHORE CORPORATION, *Respondent.*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF HARRY J. GERRITY, ON BEHALF OF THE AMERICAN TOLL BRIDGE ASSOCIATION AND THE JAMES RIVER BRIDGE SYSTEM, AS AMICI CURIAE.

OPINIONS BELOW.

The opinion of the District Court (R. 8-10) is reported in 43 F. Supp. 445. The opinion of the Circuit Court of Appeals (R. 11-13) is reported in 128 F. (2d) 450.

JURISDICTION.

A petition for a writ of certiorari was granted October 12, 1942 (R. 13). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended.

QUESTION PRESENTED.

Whether persons engaged in maintaining or operating a toll road or a drawbridge over a navigable waterway are "engaged in commerce" within the meaning of the Fair Labor Standards Act (52 Stat. 1060).

PRELIMINARY STATEMENT.

1. According to the Public Roads Administration, there were 235 toll bridges and 7 toll tunnels in operation at the close of 1941. The bridges include 115 publicly-owned and 120 privately-owned. Five of the tunnels are publicly-owned and 2 privately-owned. There are 22 international toll bridges, and 97 interstate, and 116 intrastate. Four tunnels are intrastate; 2 are interstate, and one is an international tunnel between the United States and Canada. Approximately 38 of the publicly-owned toll bridges are operated by State highway departments, and the remaining ones by commissions and State bridge authorities, some of which may be classified as political subdivisions of a State. There are 24 toll roads throughout the country, all intrastate, covering a total distance of 335.19 miles.[1]

2. The James River Bridge System owns and operates three toll bridges crossing the James River, Chuckatuck Creek, and the Nansemond River, all navigable waterways lying wholly within the State of Virginia, erected pursuant to an act of the Virginia Legislature, approved April 8, 1927. The three bridges are operated as a unit and connect at the north and south termini with U. S. Highway Route No. 17, extending from Punta Gorda, Florida, to Fredericksburg, Va. The bridge across the James River, which is the longest, is partly a through truss and elevator lift span type of structure. The bridge system comprises approximately six miles of bridges and eleven miles of roads. The roads are used by the general public. It is estimated

[1] Report "Toll Roads in the United States" as of December 31, 1940, Federal Works Agency, Public Roads Administration.

that as much as 75 per cent of the traffic over the roads does not cross any of the bridges, and hence pays no toll charge. The James River Bridge System is a private corporation.

3. The legal issues involved in the case now before the Court vitally affect all toll bridges in the United States. Under prior decisions of the Court it has been regarded as settled law that a toll bridge is not engaged in interstate commerce. The Fair Labor Standards Act (52 Stat. 1060) should not be construed so as to cover employees of toll bridges or tunnels. These employees are not engaged in interstate commerce. Congress did not intend to include employees whose work or services are not directly a part of interstate commerce. The employees involved in the instant case perform work similar to that of employees of toll bridges and tunnels. Counsel earnestly believes it was not the intention of Congress to include these employees within the coverage of the Act. The decision below should be affirmed.

ARGUMENT.

Summary of Argument.

(A) The legal status of toll bridges, and employees operating such facilities, has been definitely established as not a part of interstate commerce.

(B) The arguments on behalf of petitioners and the Administrator are contrary to and unsupported by the manifest intent of the statute involved.

Point A.

Toll bridges generally have relied for many years on the decisions of this Court (*Henderson Bridge Co.* v. *Kentucky*, (1897), 166 U. S. 150; *Detroit International Bridge Co.* v. *Tax Appeal Board*, (1935), 294 U. S. 83), holding that the ownership and operation of a toll bridge does not constitute interstate commerce, within the scope and meaning of the Commerce Clause of the Constitution.

The legal status of toll bridges has thus been regarded as definitely settled. These decisions should not be disturbed or their authority weakened by expanding the meaning of the phrase "interstate commerce" in applying the Fair Labor Standards Act of 1938 to the facts presented in the case at bar.

Section 3(b) of the Act defines "commerce" to mean, in part, "transportation, transmission, or communication among the several States or from any State to any place outside thereof." The toll bridge, or toll road, as in the instant case, does not transport or transmit persons or vehicles, "but merely permits the transit of them." (*Gouax* v. *Bovay*, 105 Fed. (2d) 256, 258; certiorari denied, 308 U. S. 607.)

Even admitting that the Act expressly makes its application dependent upon the character of the employees' activities, or, that to the extent that an employee is "engaged in the production of goods for commerce" the employer is himself so engaged (*Kirschbaum* v. *Walling*, 316 U. S. 517), it is equally apparent that the employees in the present case are in no proper sense engaged in transportation, transmission, or communication, within the purview of Section 3(b) of the Act. By ignoring the toll road corporation, as the employer, and regarding these employees as "engaged in commerce", within the meaning of the Act, the Court as a logical consequence will be forced to condemn the solid reasoning of its prior decisions holding that the ownership and operation of toll facilities do not constitute engaging in interstate commerce.

Congress has plenary power over the navigable waters of the United States. It has exercised regulatory power in respect of the construction and operation of toll bridges by the Act of March 3, 1899 (30 Stat. 1151), and the Act of March 23, 1906 (34 Stat. 84). But Congress has recognized, in the statutes cited, a different mode of authorization in the case of bridges spanning navigable waters lying wholly within the limits of a single State. None of the bridges of

the James River Bridge System, nor the drawbridge over Sisters' Creek, in the instant case, were erected over interstate navigable streams.

The employee's operation of the mechanical lift span over the James River is not engaging in commerce. The James River is a public highway to the same extent as U. S. Route 17, which connects with the bridge system. Moreover, when the operator of the lift span removes the artificial obstruction to navigation on the river, he does not engage in the commerce, transportation, transmission, or communication which is carried on over the waterway by persons using the river.

The case before the Court does not concern the power of Congress. It presents simply a question of legislative intent. The purpose and intention of Congress is abundantly manifest. (*United States* v. *Darby*, 312 U. S. 100.) In the *Kirschbaum* case, *supra*, Mr. Justice Frankfurter stated:

> "Congress may choose, as it has chosen frequently in the past, to regulate only part of what it constitutionally can regulate, leaving to the States activities which, if isolated, are only local. One need refer only to the history of Congressional control over the rates of intrastate carriers which affect commerce, and the amendment of August 11, 1939, to the Federal Employers' Liability Act, extending the scope of that Act to employees who 'shall, in any way directly or closely and substantially, affect' interstate commerce, 53 Stat. 1404. Compare *Federal Trade Commission* v. *Bunte Bros.*, 312 U. S. 349."

Unlike in the *Kirschbaum* case, *supra*, the production of goods for commerce is not involved in the case at bar; and, hence, Section 3(j) of the Act has no application. This is further illustrated by the facts and the ruling in *Warren-Bradshaw Drilling Co.* v. *Hall*, No. 21, this Term, decided November 9, 1942. The precise question is posed, as in *Federal Trade Commission* v. *Bunte Bros.*, *supra*, whether within the statutory definition of interstate commerce (Section 3(b)) the activities of the employees of the toll road

corporation make them "engaged in commerce" within the purview of the Act.

As in the *Bunte Bros.* case, *supra*, the instant case "presents the narrow question of what Congress did, not what it could do." The two factual situations are strikingly parallel in the light of the legislative background of each. The affirmance of the decision below will not thwart the will or intention of Congress any more than the conclusion reached by this Court in the case cited.

Point B.

The arguments in the brief submitted on behalf of the Administrator of the Wage and Hour Division, United States Department of Labor, as *amicus curiae* (pages 6-8), regarding the power of Congress under the commerce clause, are beside the point. No one can seriously question the power of Congress to regulate the respondent's business or that of all toll bridges in so far as they affect transportation in interstate commerce. Instrumentalities of interstate commerce may be entirely non-regulated, or only partly regulated. The degree or extent of regulation is a matter for Congress to decide.

As already pointed out, the toll road or toll bridge does not transport, transmit, or "carry" either persons, vehicles or goods. Such bridge or road, as part of the public highways, may be an instrumentality of interstate commerce—a facility for the promotion of such commerce,—but so are the free public highways throughout the Nation. The distinction is clearly illustrated in the case of a railroad, which is also a public highway. The railroad company, however, engages in transportation over the highway and is a common carrier for hire. The toll road or toll bridge is not a common carrier; such facilities do not "carry" or transport anything.

The performance of petitioners' duties are no part of the commerce which takes place over the toll road or the Intracoastal Waterway. The drawbridge operator merely re-

adjusts the highway facility for the movement of commerce over the toll road and waterway, or vice versa. He removes the obstruction to the navigation or transportation on the river. The repair man does not engage in interstate commerce by merely repairing the toll road or the drawbridge. The toll collector simply takes payment of the fee or toll charged for the passage of persons or vehicles over the toll road; in fact, a charge or rental for the temporary use and occupancy of the premises. These employees may be "necessary" for the operation of their employer's business, but they clearly are "not in any fitting sense necessary" to the transportation or commerce carried on by those who make use of the highways.

We submit, that if the toll collector of the North Shore Corporation is engaged in interstate commerce when he collects a toll from those who enter upon the highway owned by the respondent, then the employee of the gasoline station who sells fuel to vehicles on any public highway, the local garage mechanic who repairs a motor vehicle, or the men who repair and clean the public streets of any municipality, are also engaged in interstate commerce. Such a conclusion is both unsound and absurd. It is immaterial whether the work of respondent's employees further and facilitate interstate commerce. The prior decisions under the Federal Employers' Liability Act (35 Stat. 65, as amended 53 Stat. 1404), are without application, because in every case the employer's business was a part of interstate commerce. Congress must be presumed to know that this Court has definitely held that, under the commerce clause, a toll bridge is not a part of interstate transportation.

The Government's brief contains no reference to the case of *Federal Trade Commission* v. *Bunte Bros.*, *supra*, which was cited by Mr. Justice Frankfurter in the *Kirschbaum* case (see page 5 herein) by way of comparison. This recent decision is highly pertinent and illuminating. Likewise, the Circuit Court of Appeals for the Fifth Circuit, which

decided the present case, recently rendered a decision in *Johnson* v. *Dallas Downtown Development Co.*, 5 Wage Hour Rept. 984, involving the almost precise question herein presented. The Government's brief contains merely the citation of this decision. However, the Circuit Court in its opinion states, *inter alia*, that "we do not think that Congress intended that the Act with respect to those who are only 'engaged in commerce' should be stretched and strained to cover every person whose labor is of use or convenience or whose labor in some fashion contributes to the comfort or convenience of one who is so engaged."

CONCLUSION.

The case at bar presents an excellent opportunity for this Court to delimit and re-emphasize the scope of the Federal Wage and Hour Law. The decision in *Kirschbaum* v. *Walling*, *supra*, has not settled the issue of what "engaged in commerce" means. The Court should, we think, state again, with greater emphasis, that the guiding rule under the Fair Labor Standards Act is not the same as under the Federal Employers' Liability Act (53 Stat. 1404), or the National Labor Relations Act, or any other similar act of Congress. Employees of toll bridges and tunnels are not engaged "in" commerce. Bridges and tunnels are local enterprises; there are no factors of competition involved. Most vehicular travel over highway toll bridges is essentially local, probably covering distances of less than twenty miles. Highway trips are predominantly short.[3] Intrastate bridges might conceivably be used almost entirely for local intracity or intrastate movements.

The Court will judicially notice the existing gasoline rationing whereby motor vehicles are restricted in the amount of mileage traveled. Traffic volume over toll facilities in the rationed Eastern States has decreased about 40 per

[3] See House Document No. 272, 76th Congress, 1st Session, "Toll Roads and Free Roads" (pp. 7, 11-13).

cent below 1941 level.[3] Toll bridges owned and operated by State highway departments (see p. 2) are excluded, in any event, by reason of the definition of the term "employer" in Section 3(d) of the Act. An "employer" does not include "the United States or any State or political subdivision of a State." The reasoning of the Court in *Kirschbaum* v. *Walling*, *supra*, is a condemnation of any undue or arbitrary extension of coverage beyond the limits which Congress intended. These limits, we submit, will be more clearly defined by an affirmance by this Court of the decision below.

Respectfully submitted,

HARRY J. GERRITY,
Counsel for American Toll Bridge Association, and James River Bridge System, as Amici Curiae.

January, 1943.

[3] Informational Memorandum No. 22, November 30, 1942, subject: Traffic Volume Trends, Federal Works Agency, Public Roads Administration.

SUPREME COURT OF THE UNITED STATES.

No. 284.—October Term, 1942.

H. T. Overstreet, R. Brazle and L. L. Garvin, Petitioners, *vs.* North Shore Corporation. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[February 1, 1943.]

Mr. Justice Murphy delivered the opinion of the Court.

This is another case in which we must define the scope of the Fair Labor Standards Act.[1] 52 Stat. 1060, 29 U. S. C. §§ 201 *et seq.* The precise question is whether petitioners who are engaged in maintaining or operating a toll road and a drawbridge over a navigable waterway which together constitute a medium for the interstate movement of goods and persons are "engaged in commerce" within the meaning of §§ 6 and 7 of the Act.[2]

Petitioners, together with others not parties to this petition, brought this action against respondent and a subsidiary under § 16(b) of the Act for the recovery of unpaid minimum wages, overtime compensation, and liquidated damages. Respondent moved to dismiss as to all the plaintiffs, and the motion as to petitioners was granted by the district court, leave to amend being given to the other complainants who are not before us. 43 F. Supp. 445. Petitioners appealed to the Circuit Court of Appeals which affirmed the order of dismissal. 128 F. 2d 450. The important question raised as to the coverage of the Act caused us to grant certiorari.

The relevant facts alleged in the complaint as amended, which are to be taken as true for purposes of the motion to dismiss, may be summarized as follows:

[1] Compare Kirschbaum Co. v. Walling, 316 U. S. 517; Warren-Bradshaw Drilling Co. v. Hall, 317 U. S. — (decided November 9, 1942); Walling v. Jacksonville Paper Co., — U. S. — (decided January 18, 1943); Higgins v. Carr Brothers, — U. S. — (decided January 18, 1943).

[2] Section 3(b) defines "commerce" as "trade, commerce, transportation, transmission, or communication among the several States or from any State to any place outside thereof."

Respondent owns and operates a toll road and a drawbridge which is part of the road. The toll road connects United States Highway No. 17, an interstate arterial highway, with Fort George Island, which lies off the northern coast of Florida, being separated from the mainland by the Intercoastal Waterway. The toll road crosses the Waterway at Sisters' Creek by means of the drawbridge which must be raised frequently to permit the passage of boats engaged in interstate commerce. The toll road constitutes an integral part of the highway system of the United States and provides the only means of land communication between Fort George Island and the Florida mainland. It is used extensively by persons and vehicles traveling between the island and points outside Florida in interstate commerce. Mail to and from other states as well as goods produced outside Florida and consigned to merchants on the island are transported over the toll road. Each of the petitioners was employed by respondent in connection with the operation of the toll road and drawbridge. Overstreet operated the drawbridge, raising it for the passage of boats through Sisters' Creek and lowering it for the resumption of traffic over the road; Brazle was engaged in maintenance and repair work on the road and the bridge; and Garvin sold and collected toll tickets from "vehicles using said toll road in interstate commerce". Petitioners received neither the minimum wages nor the overtime compensation prescribed by §§ 6 and 7 of the Act.

We think these allegations bring petitioners within the coverage of the Act and entitle them to recover if proved.

Our starting point is respondent's concession that no question of constitutional power is involved, but only the ascertainment of Congressional intent, that is, did Congress mean to include employees such as petitioners within the Act. In arriving at that intent it must be remembered that Congress did not choose to exert its power to the full by regulating industries and occupations which affect interstate commerce. See *Kirschbaum Co.* v. *Walling*, 316 U. S. 517, 522-23; *Walling* v. *Jacksonville Paper Co.*, — U. S. — (decided January 18, 1943). Respondent contends that petitioners are in this category, that their activities are local and at most only affect commerce. But the policy of Congressional abnegation with respect to occupations affecting commerce is no reason for narrowly circumscribing the phrase

"engaged in commerce". We said in the *Jacksonville Paper Co.* case, *supra*, "It is clear that the purpose of the Act was to extend federal control in this field throughout the farthest reaches of the channels of interstate commerce". And in determining what constitutes "commerce" or "engaged in commerce" we are guided by practical considerations. *Jacksonville Paper Co.* case, *supra*; and see also *Shanks* v. *Del., Lack. & West. R. R.*, 239 U. S. 556, 558, dealing with what will shortly be pointed out as a similar question in the coverage of the Federal Employers' Liability Act.

A practical test of what "engaged in interstate commerce" means has been evolved in cases arising under the Federal Employers' Liability Act (45 U. S. C. §§ 51 *et seq.*) which, before the 1939 amendment (see 53 Stat. 1404), applied only where injury was suffered while the carrier was engaging in interstate or foreign commerce and the injured employee was employed by the carrier "in such commerce". 35 Stat. 65. In determining the reach of that phrase the case of *Pedersen* v. *Del., Lack. & West. R. R.*, 229 U. S. 146, held that an employee who was injured while carrying bolts to be used in repairing a railroad bridge over which interstate trains passed was engaged in interstate commerce within the meaning of the Liability Act. It was pointed out that tracks and bridges were indispensable to interstate commerce and "that the work of keeping such instrumentalities in a proper state of repair while thus used is so closely related to such commerce as to be in practice and in legal contemplation a part of it." *Id.* at p. 151. See also *Phila., B. & W. R. R. Co.* v. *Smith*, 250 U. S. 101; *Southern Ry. Co.* v. *Puckett*, 244 U. S. 571; *New York Cent. R. R. Co* v. *Porter*, 249 U. S. 168; *Kinzell* v. *Chicago, M. & St. P. Ry. Co.*, 250 U. S. 130; *So. Pac.* v. *Industrial Accident Comm.*, 251 U. S. 259; *Phila. & Read. Ry. Co.* v. *Di Donato*, 256 U. S. 327; *Rader* v. *Baltimore & O. R. Co.*, 108 F. 2d 980. Compare *Shanks* v. *Del., Lack. & West. R. R.*, 239 U. S. 556; *Chicago & N. W. Ry. Co.* v. *Bolle*, 284 U. S. 74; *Chicago & E. I. R. Co.* v. *Commission*, 284 U. S. 296.

We think that practical test should govern here.[3] Vehicular roads and bridges are as indispensable to the interstate movement

[3] This has been the administrative interpretation. See Interpretative Bulletin No. 5 of the Wage and Hour Division of the Department of Labor, issued in November, 1939, at p. 7. This is set forth in the 1941 Edition of the Wage and Hour Manual at p. 34. See also p. 54.

Compare the dissenting opinion in Pedersen v. Fitzgerald Construction Co., 262 App. Div. (N. Y.) 665, 666, affirmed without opinion, 288 N. Y. 211.

of persons and goods as railroad tracks and bridges are to interstate transportation by rail. If they are used by persons and goods passing between the various States, they are instrumentalities of interstate commerce. Cf. *Covington &c. Bridge Co.* v. *Kentucky*, 154 U. S. 204, 218. Those persons who are engaged in maintaining and repairing such facilities should be considered as "engaged in commerce" even as was the bolt carrying employee in the *Pedersen* case, *supra*, because without their services these instrumentalities would not be open to the passage of goods and persons across state lines. And the same is true of operational employees whose work is just as closely related to the interstate movement. Of course, all this is subject to the qualification that the Act does not consider as an employer the United States or any State or political subdivision of a State, and hence does not apply to their employees. § 3(d).

The allegations of petitioners' complaint satisfy this practical test. The road and bridge allegedly afford passage to an extensive movement of goods and persons between Florida and other states, and moreover the drawbridge presents an obstacle to interstate traffic by water over the Intercoastal Waterway if not properly operated. The operational and maintenance activities of petitioners are vital to the proper functioning of these structures as instrumentalities of interstate commerce. The services of Overstreet are necessary to prevent the drawbridge from being either a barrier to interstate navigation or else a gap in the vehicular way. Without the services of Brazle the facilities would fall into disrepair, and both operation and maintenance would seem to depend upon Garvin's collecting the toll from users of the structures. The work of each petitioner in providing a means of interstate transportation and communication is so intimately related to interstate commerce "as to be in practice and in legal contemplation a part of it" (*Pedersen's* case, *supra*) and justifies regarding petitioners as "engaged in commerce" within the meaning of the Fair Labor Standards Act.

Respondent resists the application of the test of the *Pedersen* and related cases, cited above, pointing out that there may be pitfalls in translating implications from the special aspects of one statute to another (see *Trade Comm'n* v. *Bunte Bros.*, 312 U. S. 349, 353), and claiming that significant differences exist between the Federal Employers' Liability Act and the Fair Labor Standards Act. The outstanding difference asserted is that a rail-

road company is actually engaged in commerce as a carrier of goods and persons, and since it is difficult to consider the business other than as a whole and to separate maintenance from transportation employees, there is good reason for treating maintenance employees as engaged in commerce. (Compare the *Pedersen* case, *supra*, at pp. 151-152.) As regards itself respondent says that it is not engaged in commerce, but only in providing facilities which those carrying on commerce may use, and therefore there is no sound basis for treating its maintenance and operational employees as engaged in commerce—rather they only affect commerce. Reliance is placed upon *Henderson Bridge Company* v. *Kentucky*, 166 U. S. 150, and *Detroit Bridge Co.* v. *Tax Board*, 294 U. S. 83, where in sustaining the power of the States of Kentucky and Michigan, respectively, to tax the franchise of domestic corporations operating bridges between Kentucky and Indiana and between Michigan and Canada, it was said that the respective bridge companies were not engaged in interstate or foreign commerce. We do not regard these objections as well taken.

The Federal Employers' Liability Act and the Fair Labor Standards Act are not strictly analogous, but they are similar. Both are aimed at protecting commerce from injury through adjustment of the master-servant relationship, the one by liberalizing the common law rules pertaining to negligence and the other by eliminating sub-standard working conditions. We see no persuasive reason why the scope of employed or engaged "in commerce" laid down in the *Pedersen* and related cases, cited above, should not be applied to the similar language in the Fair Labor Standards Act, especially when Congress in adopting the phrase "engaged in commerce" had those Federal Employers' Liability Act cases brought to its attention.[4]

The *Henderson* and *Detroit* bridge cases, *supra*, do not affect our conclusion. We have pointed out that decisions such as those, dealing with various assertions of state or federal power in the commerce field, are not particularly helpful in determining the scope of the Act. *Kirschbaum Co.* v. *Walling*, *supra*, pp. 520-21; *Walling* v. *Jacksonville Paper Co.*, *supra*. But even if we accept the premise of the *Bridge* cases and regard respondent as not en-

[4] See 83 Cong. Rec., 75th Cong., 3d Sess., Pt. 7, p. 7434, and Pt. 8, pp. 9168-71. See also Joint Hearings before the Senate Committee on Education and Labor and the House Committee on Labor on S. 2475 and H. R. 7200, 75th Cong., 1st Sess. (1937), Pt. 1, pp. 42-43.

gaged in commerce, the result is not changed. The nature of the employer's business is not determinative, because as we have repeatedly said, the application of the Act depends upon the character of the employees' activities. *Kirschbaum Co.* v. *Walling, supra*, p. 524; *Warren-Bradshaw Drilling Co.* v. *Hall*, 317 U. S. — (decided November 9, 1942); *Walling* v. *Jacksonville Paper Co., supra*. The fact that respondent may be subject to state taxation does not imply that it is free from federal regulation or that its road and drawbridge are not instrumentalities of interstate commerce. Petitioners, who are engaged in operating and maintaining respondent's facilities so that there may be interstate passage of persons and goods over them, are so closely related to that interstate movement as a practical matter that we think they must be regarded, under the allegations of their complaint, as "engaged in commerce" within the meaning of §§ 6 and 7 of the Act.

We conclude that petitioners' complaint was erroneously dismissed. Accordingly, the judgment below is reversed and the cause remanded to the district court for further proceedings in conformity with this opinion.

Reversed.

Mr. Justice ROBERTS and Mr. Justice JACKSON dissent.

A true copy.

Test:

Clerk, Supreme Court, U. S.